

# House Bill 2777

Sponsored by Representative NATHANSON; Representatives BARKER, BERGER, CLEM, C EDWARDS, D EDWARDS, ESQUIVEL, GARRARD, READ, ROBLAN, SCHAUFLE, STIEGLER, VANORMAN, WITT

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates income tax credit for qualified investments in machinery and equipment. Limits total amount of credit that may be claimed in biennium and limits amount each taxpayer may claim.

Applies to tax years beginning on or after January 1, 2010, but permits qualified investments purchased on or after July 1, 2009, to be considered qualified investments for 2010 tax year. Sunsets program by prohibiting certification of new qualified investments on or after July 1, 2015.

## A BILL FOR AN ACT

Relating to investment tax credits; creating new provisions; and amending ORS 314.752 and 318.031.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 315.**

**SECTION 2. (1) As used in this section, "qualified investment" means a purchase of machinery or equipment that is:**

**(a) Used in a trade or business or for the production of income;**

**(b) Installed or used in a facility located in this state;**

**(c) Used in a trade or business operating in a traded sector, as defined in ORS 285A.010; and**

**(d) Used by a small business, as defined in ORS 285A.010.**

**(2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer for \_\_\_\_\_ percent of the total certified amount of qualified investments made by the taxpayer during the tax year. The amount of the credit may not exceed the lesser of:**

**(a) \$\_\_\_\_\_; or**

**(b) The tax liability of the taxpayer for the tax year.**

**(3)(a) A taxpayer seeking a credit under this section shall first obtain credit certification from the Department of Revenue by applying for certification on a form prescribed by the department. The application shall state the date of purchase, the amount of the qualified investment made by the taxpayer during the tax year and any other information required by the department.**

**(b) The department shall review applications and issue certifications for those applications that describe qualified investments. The department shall maintain a record of the cumulative amounts certified under this subsection and may not issue a certification during a biennium if the amount proposed to be certified, when added to the total of previously certified amounts for the biennium, exceeds \$30 million.**

**(c) A taxpayer may not claim a credit under this section without first obtaining certification under this subsection.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) Any tax credit otherwise allowable under this section that is not used by the taxpayer  
2 in a particular tax year because of the limitation in subsection (2)(b) of this section may be  
3 carried forward and offset against the taxpayer's tax liability for the next succeeding tax  
4 year. Any credit remaining unused in the next succeeding tax year may be carried forward  
5 and used in the second succeeding tax year, and likewise any credit not used in that second  
6 succeeding tax year may be carried forward and used in the third succeeding tax year, and  
7 any credit not used in that third succeeding tax year may be carried forward and used in the  
8 fourth succeeding tax year, but may not be carried forward for any tax year thereafter.

9 (5) A nonresident shall be allowed the credit allowed under subsection (2) or (4) of this  
10 section. The credit shall be computed in the same manner and be subject to the same limi-  
11 tations as the credit granted to a resident.

12 (6) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085,  
13 or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit  
14 allowed by this section shall be prorated or computed in a manner consistent with ORS  
15 314.085.

16 (7) If a change in the status of a taxpayer from resident to nonresident or from nonres-  
17 ident to resident occurs, the credit allowed by this section shall be determined in a manner  
18 consistent with ORS 316.117.

19 (8) If the qualified investment consists of property for which the taxpayer claims a de-  
20 duction for depreciation for federal tax purposes, the adjusted basis of the property shall be  
21 further adjusted by reducing the federal adjusted basis by the total amount of credit allow-  
22 able under this section for Oregon tax purposes.

23 **SECTION 3.** ORS 314.752 is amended to read:

24 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
25 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
26 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
27 allowable to the shareholders of the S corporation.

28 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on  
29 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
30 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
31 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
32 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
33 manner prescribed under section 1377(a) of the Internal Revenue Code.

34 (3) The character of any item included in a shareholder's pro rata share under subsection (2)  
35 of this section shall be determined as if such item were realized directly from the source from which  
36 realized by the corporation, or incurred in the same manner as incurred by the corporation.

37 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
38 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
39 316.117, then that provision shall apply to the nonresident shareholder.

40 (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
41 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
42 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
43 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
44 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
45 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS

1 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS  
 2 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care  
 3 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS  
 4 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324  
 5 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507  
 6 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone  
 7 marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel  
 8 vehicle) and ORS 315.141 (biomass production for biofuel) **and section 2 of this 2009 Act (invest-**  
 9 **ment tax credit).**

10 **SECTION 4.** ORS 318.031 is amended to read:

11 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 12 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 13 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 14 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,  
 15 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 2 of this 2009**  
 16 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

17 **SECTION 5.** **Section 2 of this 2009 Act and the amendments to ORS 314.752 and 318.031**  
 18 **by sections 3 and 4 of this 2009 Act apply to tax years beginning on or after January 1, 2010.**

19 **SECTION 6.** **Notwithstanding sections 2 and 5 of this 2009 Act:**

20 (1) **The Department of Revenue may certify qualified investment amounts with respect**  
 21 **to qualified investments that are purchased on or after July 1, 2009; and**

22 (2) **Qualified investments described in subsection (1) of this section shall be deemed to**  
 23 **have been purchased during the tax year of the taxpayer that begins on or after January 1,**  
 24 **2010, and before January 1, 2011.**

25 **SECTION 7.** **The Department of Revenue may not certify qualified investments under**  
 26 **section 2 (3) of this 2009 Act after July 1, 2015.**